

§ 218.35

(to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§ 218.35 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to these regulations, the U.S. citizen (as defined by § 216.103 of this chapter) conducting the activity identified in § 218.30(a) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 218.36 or a renewal under § 218.37.

§ 218.36 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the periods of validity of this subpart, but may be renewed or modified sooner subject to the renewal conditions in § 218.37 and the modification conditions in § 218.38.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (i.e., mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

[74 FR 28343, June 15, 2009, as amended at 77 FR 4924, Feb. 1, 2012]

§ 218.37 Renewal of Letters of Authorization and adaptive management.

(a) A Letter of Authorization issued under § 216.106 of this chapter and § 218.36 for the activity identified in § 218.30(c) will be renewed upon:

(1) Notification to NMFS that the activity described in the application submitted under § 218.35 will be undertaken and that there will not be a substantial modification to the desired work, miti-

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gation, or monitoring undertaken during the upcoming period of validity;

(2) Timely receipt of the monitoring reports required under § 218.34; and

(3) A determination by NMFS that the mitigation, monitoring and reporting measures required under § 218.33 and the Letter of Authorization issued under § 216.106 of this chapter and § 218.36, were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under §§ 216.106 and 218.37 of this chapter indicates that a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the FEDERAL REGISTER.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring set forth in the preamble of these regulations. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from GOMEX Study Area or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§ 218.34(j)).

(3) Results from specific stranding investigations (either from the GOMEX

Range Complex Study Area or other locations).

(4) Results from general marine mammal and sound research (funded by the Navy (described below) or otherwise).

(5) Any information which reveals that marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent Letters of Authorization.

[74 FR 28343, June 15, 2009, as amended at 77 FR 4924, Feb. 1, 2012]

§ 218.38 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 218.36 of this chapter and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 218.37, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 218.30(b), a Letter of Authorization issued pursuant to §§ 216.106 and 218.36 of this chapter may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the FEDERAL REGISTER within 30 days subsequent to the action.

Subparts E–K [Reserved]

Subpart L—Taking and Importing Marine Mammals; U.S. Navy's Mariana Islands Training Range Complex (MIRC)

SOURCE: 75 FR 45547, Aug. 3, 2010, unless otherwise noted.

EFFECTIVE DATE NOTE: At 75 FR 45547, Aug. 3, 2010, Subpart L was added, effective Aug. 3, 2010 through Aug. 3, 2015.

§ 218.100 Specified activity and specified geographical area.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occur incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy may be authorized in a Letter of Authorization (LOA) if it occurs within the Mariana Islands Range Complex (MIRC) Study Area (as depicted in Figure 1–1 in the Navy's application for MIRC), which is bounded by a pentagon with the following five corners: 16°46'29.3376" N. lat., 138°00'59.835" E. long.; 20°02'24.8094" N. lat., 140°10'13.8642" E. long.; 20°3'27.5538" N. lat., 149°17'41.0388" E. long.; 7°0'30.0702" N. lat., 149°16'14.8542" E. long.; and 6°59'24.633" N. lat., 138°1'29.7228" E. long.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources, or similar sources, for Navy training, maintenance, or research, development, testing, and evaluation (RDT&E) (estimated amounts below):

(i) AN/SQS–53 (hull-mounted active sonar)—up to 10865 hours over the course of 5 years (an average of 2173 hours per year);

(ii) AN/SQS–56 (hull-mounted active sonar)—up to 705 hours over the course of 5 years (an average of 141 hours per year);

(iii) AN/SSQ–62 (Directional Command Activated Sonobuoy System (DICASS) sonobuoys)—up to 8270 sonobuoys over the course of 5 years (an average of 1654 sonobuoys per year);

(iv) AN/AQS–22 (helicopter dipping sonar)—up to 2,960 dips over the course of 5 years (an average of 592 dips per year);

(v) AN/BQQ–10 (submarine hull-mounted sonar)—up to 60 hours over the course of 5 years (an average of 12 hours per year);

(vi) MK–48, MK–46, or MK–54 (torpedoes)—up to 200 torpedoes over the